

Court of Appeals, State of Michigan

ORDER

People of MI Keith Edward Nadeau

Docket No. 260892

LC No. 02-003427-FH

Christopher M. Murray
Presiding Judge

Helene N. White

Brian K. Zahra
Judges

The Court orders that, in lieu of granting the delayed application for leave to appeal, we remand this matter to the trial court for it to either resentence defendant pursuant to the sentence recommendation, or allow defendant to withdraw his plea. *People v Killebrew*, 416 Mich 189; 330 NW2d 834 (1982); MCR 6.302(C)(3).

Judges Murray and Zahra urge the Supreme Court to grant any application for leave that may be filed in this case so that *People v Killebrew*, 416 Mich 189 (1982), can be reconsidered. Where, as here, defendant is made fully aware prior to tendering his plea of guilty that the prosecutor's sentencing recommendation is not binding on the sentencing court and, in fact, the recommendation is likely to be rejected by the sentencing court, the defendant should not have a right to withdraw his plea when the prosecutor's recommendation is not adopted at the time of sentencing. As aptly stated by Justice Ryan in his dissenting opinion in *Killebrew, supra* at 214: "[t]his new policy introduces into our jurisprudence for the first time, and insofar as I can determine the first time anywhere, the proposition that a valid guilty plea may be withdrawn as of right despite the fact that no promise has been made to the defendant as to the sentence which will be imposed, and the only promise made-- that a recommendation will be made-- is kept."

We do not retain jurisdiction.

Judge White observes that while there may be good reason to modify the rule announced in *Killebrew* and amend MCR 6.302(C)(3) to allow for the option of a binding plea as part of a plea agreement involving a sentence recommendation, in the instant case defendant was not adequately informed of this possibility when he tendered his plea, and any modification should include the requirement of clear notification that the plea will be binding even if the court disregards the recommendation.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 19 2005

Date

Sandra Schultz Mengel
Chief Clerk